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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

DOUGLAS SMITH,  
Plaintiff

CIVIL ACTION  
SECTION "P"  
NO. CV02-2107-A

VERSUS

MARK SWAFFORD, et al.,  
Defendants

JUDGE JAMES T. TRIMBLE  
MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

Before the court is a complaint filed pursuant to 42 U.S.C. § 1983, in forma pauperis, by pro se plaintiff Douglas Smith ("Smith") on September 30, 2002, and amended on April 28, 2003 (Doc. Item 5) and March 12, 2004 (Doc. Item 7). The sole remaining defendant is Sgt. Henry Woods ("Woods"). Smith alleges that, while he was incarcerated in the Winn Correctional Center ("WCC") in October 2002, Woods failed to protect him from being stabbed by another inmate.<sup>1</sup>

Smith's claim that defendants failed to protect him from the inmate who attacked him was previously dismissed with prejudice for

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<sup>1</sup> Although Smith also claimed he was denied medical care by some of the defendants, he has not alleged that Woods denied him medical care.

failure to state a claim on which relief may be granted (Doc. 13). Subsequent to that judgment of dismissal, Woods was served with the complaint (Doc. 58), answered (Doc. 61), and filed a motion for summary judgment (Doc. 64) which is now before the court. Since Smith's only claim against Woods was for failure to protect him from the attack by the other inmate, and that claim has already been dismissed with prejudice in its entirety, Smith's claim against Woods should also be dismissed.

Therefore, Woods' motion for summary judgment (Doc. 64) should be granted and Smith's action against Woods should be dismissed.

#### Conclusion

Based on the foregoing discussion, IT IS RECOMMENDED that Woods' motion for summary judgment be GRANTED and that Smith's action against Woods be DISMISSED WITH PREJUDICE.

Under the provisions of 28 U.S.C. § 636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the district judge before he makes a final ruling.

#### **A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED**

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT  
WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR  
AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING  
ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL  
CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Alexandria, Louisiana, on this 25<sup>th</sup>  
day of September, 2008.

JAMES D. KIRK  
UNITED STATES MAGISTRATE JUDGE